

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2109 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ARVINDBHAI PUNJALAL KHATRI & ANR.

Versus

STATE OF GUJARAT

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Appearance:

MS KETTY A MEHTA for Petitioners

MS PREETI S PARMAR for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/01/97

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioners-employees of the Panchayat Department of the State of Gujarat, filed this writ petition before this court and prayer has been made that the order dated 7th April, 1984 of the respondent be quashed and set aside. Further prayer has been made for declaring Rule-1(3) of the Gujarat Development Services (Lower Standard and Higher Standard Departmental Examination) Rules, 1979 to

be ultravires of Articles 14 and 16 of the Constitution.

2. Under order dated 7th April, 1984 as many as 26 persons were promoted to the post of Taluka Development Officer. It is a case of the petitioners that the persons shown at Sr.5 to 26 in the said order are junior to the petitioners. The petitioners' grievance is that the said junior persons, as Class III, are shown to be promoted even without passing the said examination on the post of Taluka Development Officer by virtue of provisions of the Examination Rules aforesaid as they were above the age of 45 years on 11th January, 1979, they were exempted from appearing in the said examination and are therefore to be promoted even irrespective of the seniority in Class III post.

3. This court on 4th May, 1984 granted ad-interim relief in terms to permit the State Government to grant promotions to the post of Taluka Development Officer on the interpretation which they canvass of the impugned Rule-1(3) of the Gujarat Development Service (Lower Standard and Higher Standard Departmental Examination) Rules, 1979 on the condition that the State Government shall also promote the petitioners purely on ad-hoc basis and subject to the result of the petition without prejudice the rights and contentions in the petition. The counsel for the petitioners is unable to say whether the petitioners have been given the promotion or not. However, she made a statement before this court that the letter which has been sent by her to the petitioners has returned undelivered with the endorsement of the postal authority that the addressee has left the place. What further developments have taken place during all these years have not been brought on record by the petitioners. Be that as it may.

4. Challenge is made by the petitioners to the order dated 7th April, 1984 under which 26 persons were promoted to the post of Taluka Development Officer. It is true that the petitioners have further challenged the validity of the provisions as contained in Rule-1(3) of the Examination Rules, 1979, but it is equally true that in case that provision is struck down or it is interpreted in the way in which it is sought to be interpreted by the petitioner then it will have an effect of depriving of the promotion to those persons who have been promoted under the impugned order. The petitioners have not impleaded those persons as party to this petition. So any order made behind the back of those persons will adversely affect their promotion. The writ petition challenging the appointment without impleading

all the appointees is not maintainable more so when the appointments are already made long back. Any reference is required then reference may have to the decision of the Hon'ble Supreme Court in the case of Ishwar Singh vs. Kuldip Singh reported in 1995 SCC (L & S) 373. Those persons were necessary party to this petition as their promotions have been challenged and in the absence of those persons no relief can be granted to the petitioners.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted by this court stands vacated.

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